

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Crl.MC.No. 900 of 2015

**CMP 10779/2014 IN CRIME NO.485/2014 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KUNNAMANGALAM DATED 14-01-2015**

PETITIONER(S)/ACCUSED:

**SHIHABUDHEEN,
S/O.ABDULLA, NAYPOTTAMMAL HOUSE, PANNIKODE P.O.,
MUKKOM, KOZHIKODE.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S)/COMPLAINANT:

**THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA. PIN - 6820 31.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
27-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE
ABOVE VEHICLE KL-57-G-4920 DATED 4/4/2013.**

ANNEXURE A2: A TRUE COPY OF THE VALID PASS DATED 28/10/2014.

**ANNEXURE A3: A TRUE COPY OF THE DEALERSHIP LICENSE OF MR.SHAJID E.K.
DATED 2/4/2014.**

**ANNEXURE A4: A TRUE COPY OF THE JUDGMENT IN WPC 29546/2014
DATED 13/11/2014.**

**ANNEXURE A5: A TRUE COPY OF THE ORDER IN C.M.P. 10779/2014 IN
CRIME NO.485/2014 BEFORE THE JUDICIAL MAGISTRATE FIRST
CLASS COURT, KUNNAMANGALAM DTD.14.1.2015.**

**ANNEXURE A6: A TRUE COPY OF THE REPAYMENT SCHEDULE BY INDUS BANK
DATED 19/03/2013.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. UBAID, J.

Crl.M.C.No.900 of 2015

Dated this the 27th day of March, 2015

O R D E R

The petitioner's vehicle with full load of river sand was seized by the Mavoor police. A case was registered against him by the police under Sections 20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short, 'the Sand Act'). Pending investigation, the petitioner made an application before the learned Judicial First Class Magistrate Court, Kunnamkulam for permission to compound the offence. Finding that composition cannot be permitted under the Sand Act, the learned Magistrate disallowed the request in CMP 10779/2014. The said order dated 14.01.2015 is under challenge, and the petitioner seeks a direction to permit him to compound the offence. On a perusal of the materials, I find that the property involved in this case is river sand. The petitioner cannot justify transportation of river sand under some permit given by some other authority under the Kerala Minor Mineral Concession Rules, 1967. Transportation or possession of river sand is possible only on authorisation as prescribed under the Kerala Act. I find that the request was rightly disallowed by the

trial court. The Kerala Act does not provide for composition of the offence. Composition can be allowed, if it is a prosecution under the Mines and Minerals (Development and Regulation) Act. There is specific provision allowing composition under the said Act. Now, the learned counsel makes a request to direct the court below to release his vehicle. For such a request, he will have to approach the trial court under Section 451 Cr.P.C. When such an application is filed, the learned Magistrate can release the vehicle on appropriate conditions, in view of the provision contained under Section 23A of the Sand Act, if the petitioner is the right person to receive the vehicle in interim custody. Only such an observation is possible in this proceeding as regards the request to release the vehicle. This Crl.M.C. is liable to be dismissed on the finding that the petitioner's request for composition was rightly disallowed by the trial court.

In the result, this petition is dismissed.

Sd/-
P. UBAID, JUDGE

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